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DRAFT FINANCIAL REGULATIONS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Prepared by the Tribunal

Introductory note

Pursuant to the decision of the 5th meeting of States Parties authorizing the International Tribunal for the Law of the Sea to establish its own financial rules and regulations, which are to be submitted to the Meeting of States Parties for consideration, the Tribunal adopted the present Draft Financial Regulations. The Tribunal presently applies the Financial Regulations and Rules of the United Nations mutatis mutandis in accordance with the decision of the 4th meeting of States Parties.

To the extent possible, the Draft Financial Regulations are based on the Financial Regulations of the United Nations (ST/SGB/Financial Rules/1/Rev.3).

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DRAFT FINANCIAL REGULATIONS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Regulation 1

Applicability

1.1 These Regulations shall govern the financial administration of the International Tribunal for the Law of the Sea.

1.2 For the purposes of these Regulations:

(a) "Budget and Finance Committee" means the Committee established as such by the Tribunal;

(b) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982 together with the Agreement of 28 July 1994 relating to the implementation of Part XI of the United Nations Convention;

(c) "Meeting of States Parties" means the Meeting of States Parties to the Convention;

(d) "Registrar" means the Registrar of the International Tribunal for the Law of the Sea;

(e) "Rules" means the Rules of the Tribunal;

(f) "Statute" means the Statute of the International Tribunal for the Law of the Sea, Annex VI to the Convention.

Regulation 2

The financial period

2.1 The financial period shall consist of two consecutive calendar years, beginning with the year 2000. Until then the financial period shall consist of one calendar year.

Regulation 3

The budget

3.1 The draft budget for each financial period shall be prepared by the Registrar.

3.2 The draft budget shall cover income and expenditures for the financial period to which they relate and shall be presented in United States dollars.

3.3 The draft budget shall be divided into parts, sections and, as appropriate, programmes. It shall be accompanied by such information, annexes and

explanatory statements as may be requested by or on behalf of the Meeting of States Parties, including a brief statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful.

3.4 The Registrar shall submit the draft budget for the following financial period to the Budget and Finance Committee before the end of February of the year preceding the financial period for examination. The Budget and Finance Committee shall transmit the draft budget proposed by the Registrar to the Tribunal, with its comments and recommendations.

3.5 The Tribunal shall consider and approve the draft budget for the following financial period. The proposed budget as approved by the Tribunal shall be submitted to the Meeting of States Parties for consideration and adoption.

3.6 Supplementary budget proposals may be submitted by the Registrar whenever necessary. They shall be prepared and, as far as possible, submitted in accordance with the procedure set out in paragraphs 1 to 5.

3.7 The Registrar may enter into commitments for future financial periods, provided that such commitments:

(a) Are for activities which have been approved by the Meeting of States Parties and are expected to continue beyond the end of the current financial period; or

(b) Are authorized by specific decisions of the Tribunal acting with the prior approval of the Meeting of States Parties.

Regulation 4

Appropriations

4.1 The appropriations adopted by the Meeting of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes for which the appropriations were adopted and up to the amounts adopted.

4.2 Appropriations shall be available for obligation during the financial period to which they relate.

4.3 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to discharge obligations in respect of goods supplied and services rendered in the financial period and to liquidate any other outstanding legal obligation of the financial period. Any unused balance of the appropriations shall be surrendered.

4.4 At the end of the twelve-month period provided in regulation 4.3, the then remaining balance of any appropriations retained will be surrendered. At that time, any unliquidated obligations of the financial period in question shall be

cancelled or, where the obligation remains a valid charge, transferred as an obligation against current appropriations.

4.5 No transfer between appropriation sections may be made without authorization by the Tribunal, which shall give an explanation on the necessity for such a transfer to the Meeting of States Parties.

Regulation 5

Provision of funds

5.1 The funds of the Tribunal shall include:

(a) Assessed contributions made by States Parties in accordance with article 19, paragraph 1, of the Statute;

(b) Contributions by the International Seabed Authority in accordance with article 19, paragraph 1, of the Statute;

(c) Contributions by other entities in accordance with article 19, paragraph 2, of the Statute;

(d) Voluntary contributions made by States Parties, States, the International Seabed Authority or other entities;

(e) Such other funds to which the Tribunal may become entitled or may receive.

5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.3, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment. Pending the receipt of such contributions, the appropriations may be financed from the working capital fund.

5.3 The contributions of States Parties and the International Seabed Authority shall be assessed on the basis of the appropriations approved by the Meeting of States Parties for that financial period, except that adjustments shall be made to the assessments in respect of:

(a) Supplementary appropriations for which contributions have not previously been assessed on States Parties;

(b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.9;

(c) Any balance of the appropriations surrendered under regulations 4.3 and 4.4.

5.4 After the Meeting of States Parties has adopted or revised the budget and determined the amount of the working capital fund, the Registrar shall:

(a) Transmit the relevant documents to the States Parties and the International Seabed Authority;

(b) Inform the States Parties and the International Seabed Authority of their commitments in respect of annual contributions and advances to the working capital fund;

(c) Request them to remit their contributions and advances.

5.5 Contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.4, or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.

5.6 Annual contributions and advances to the working capital fund shall be assessed and paid in United States dollars.

5.7 Payments made by a State Party shall be credited first to the working capital fund and then to the contributions due, in the order in which the State Party was assessed.

5.8 The Registrar shall submit to each Meeting of States Parties a report on the collection of contributions and advances to the working capital fund.

5.9 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the working capital fund at rates to be determined by the Meeting of States Parties.

5.10 Contributions of entities other than a State Party or the International Seabed Authority to the expenses of the Tribunal shall be treated as miscellaneous income.

Regulation 6

Funds

6.1 There shall be established a general fund for the purpose of accounting for the administrative expenditures of the Tribunal. The contributions paid under regulation 5.1 by States Parties and miscellaneous income and any advances made from the working capital fund to finance administrative expenditures shall be credited to the general fund.

6.2 There shall be established a working capital fund in an amount and for purposes to be determined from time to time by the Meeting of States Parties. The working capital fund shall be constituted by advances from States Parties. Advances shall be made in accordance with an agreed scale of assessment based upon the scale used for the regular budget. Advances shall be carried to the credit of States Parties which have made such advances.

6.3 Advances made from the working capital fund to finance budgetary appropriations shall be reimbursed to the fund as soon as and to the extent that income is available for that purpose.

6.4 Except when such advances are recoverable from some other source, advances made from the working capital fund for unforeseen and extraordinary expenses or other authorized purposes shall be reimbursed through the submission of supplementary budget proposals.

6.5 Income derived from investments of the working capital fund shall be credited to miscellaneous income.

6.6 Trust funds, reserve and special accounts may be established by the Registrar and shall be reported to the Tribunal.

6.7 The purpose and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Meeting of States Parties, such funds and accounts shall be administered in accordance with the present Regulations.

Regulation 7

Other income

7.1 All other income except:

(a) Contributions to the budget;

(b) Voluntary contributions made by States Parties, other States and the International Seabed Authority or other entities;

(c) Direct refunds of expenditures made during the financial period;

(d) Revenue derived from staff assessment,

shall be classed as miscellaneous income, for credit to the general fund.

7.2 Voluntary contributions, whether or not in cash, may be accepted by the Registrar, provided that the Tribunal is satisfied that the purposes for which the contributions are made are consistent with the nature and functions of the Tribunal. Acceptance of contributions which directly or indirectly involve additional financial liability for the Tribunal shall require the consent of the Meeting of States Parties.

7.3 Contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.

7.4 Contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period.

Regulation 8

Custody of funds

The Registrar shall designate the bank or banks in which the funds of the Tribunal shall be kept.

Regulation 9

Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal periodically of such investments.

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account.

Regulation 10

Internal control

10.1 The Registrar shall:

(a) Establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy;

(b) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(c) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Tribunal;

(d) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Tribunal;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Meeting of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Tribunal.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other

appropriate authorizations have been made in writing under the authority of the Registrar.

10.3 The Registrar may make such ex gratia payments as he deems to be necessary in the interest of the Tribunal, provided that a statement of such payments shall be submitted to the Meeting of States Parties with the accounts.

10.4 The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the auditors with the accounts.

10.5 Substantial purchases of equipment, supplies and other requirements as specified in the Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the President, deems that, in the interests of the Tribunal, a departure from the rule is desirable.

Regulation 11

The accounts

11.1 The Registrar shall submit accounts for the financial period. In addition, he shall maintain, for management purposes, such accounting records as are necessary. The accounts for the financial period shall show:

(a) The income and expenditures of all funds;

(b) The status of appropriations, including:

(i) The original budget appropriations;

(ii) The appropriations as modified by any transfers;

(iii) Credits, if any, other than the appropriations adopted by the Meeting of States Parties;

(iv) The amounts charged against those appropriations and/or other credits;

(c) The assets and liabilities of the Tribunal.

The Registrar shall also give such other information as may be appropriate to indicate the current financial position of the Tribunal.

11.2 The accounts of the Tribunal shall be presented in United States dollars. Accounting records may, however, be kept in such other currency as the Registrar may deem necessary.

11.3 Appropriate separate accounts shall be maintained for all trust funds and special accounts.

11.4 The accounts for the financial period shall be submitted by the Registrar to the Auditors not later than 31 March following the end of the financial period.

Regulation 12

Audit

12.1 The Tribunal shall appoint an independent auditor which shall be an internationally recognized firm of auditors. The independent auditor shall be appointed for a period of four years and may be reappointed.

12.2 The audit shall be conducted in conformity with generally accepted common auditing standards and in accordance with the additional terms of reference set out in the annex to these Regulations.

12.3 The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Tribunal.

12.4 The Auditor shall be completely independent and solely responsible for the conduct of the audit.

12.5 The Tribunal may request the Auditor to perform certain specific examinations and issue separate reports on the results.

12.6 The Registrar shall provide the Auditor with the facilities required in the performance of the audit.

12.7 The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to matters referred to in regulation 12.3 and in the additional terms of reference.

12.8 The Tribunal shall examine the financial statements and the audit reports and shall forward them to the Meeting of States Parties, with such comments as it deems appropriate.

Regulation 13

Decisions involving expenditures

13.1 Where, in the opinion of the Registrar, the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the Meeting of States Parties has made the necessary appropriations or unless the Registrar certifies that provision can be made under the conditions of the applicable decision of the Meeting of States Parties relating to unforeseen and extraordinary expenses.

Regulation 14

General provisions

14.1 These Regulations shall become effective on 1 July 1998 and shall apply to the financial period 1999 and to subsequent financial periods.

14.2 These Regulations may be amended by the Meeting of States Parties, taking into consideration the views of the Tribunal.

ANNEX

Additional terms of reference governing the audit of the International Tribunal for the Law of the Sea

1. The Auditor shall perform such audit of the accounts of the Tribunal, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

(a) That the financial statements are in accord with the books and records of the Tribunal;

(b) That the financial transactions reflected in the statements have been in accordance with the financial rules and regulations, the budgetary provisions and other applicable directives;

(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Tribunal's depositaries or by actual count;

(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which, in the opinion of the Auditor, are necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or his designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Tribunal and the Meeting of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

"We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Tribunal for the Law of the Sea for the financial period ended 31 December 19... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with the financial regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Tribunal for the financial period shall be submitted to the Meeting of States Parties through the Tribunal. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept - where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Meeting of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Tribunal's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Tribunal to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Meeting of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority which governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the reports;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Meeting of States Parties should have early knowledge.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Meeting of States Parties, the Tribunal or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect of the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.